

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
ABKCO MUSIC, INC., et al., : 15-CV-04025 (ER)  
:  
Plaintiffs, :  
v. :  
:  
SAGAN, et al., : 500 Pearl Street  
: New York, New York  
:  
Defendants. : February 14, 2017  
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TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY HEARING  
BEFORE THE HONORABLE HENRY B. PITMAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE CLERK: ABKCO Music v. Sagan.

2 Counsel, please state your name for the record.

3 MR. DICKSTEIN: Tal Dickstein, Loeb & Loeb with my  
4 colleague Chris Carbone also of Loeb & Loeb for all the  
5 plaintiffs.

6 MS. RANAHAN: Erin Ranahan of Winston & Strawn for  
7 the defendants.

8 THE COURT: Good morning. We are here to address  
9 some discovery disputes that have been raised in  
10 correspondence that I've gotten over the last several weeks.  
11 Let me just go through the correspondence.

12 I have this in chronological order so it goes back  
13 and forth. I have Ms. Ranahan's letter of December 20. I  
14 have Mr. Dickstein's letter of January 6th. I have Ms.  
15 Ranahan's letter of January 17, Mr. Dickstein's letter of  
16 January 23, Ms. Ranahan's letter of January 26, Mr.  
17 Dickstein's letter of February 3, Ms. Ranahan's letter of  
18 February 8, and Mr. Dickstein's letter of February 13.

19 Is that the universe of relevant correspondence? Do  
20 you want me to go over those again?

21 MR. DICKSTEIN: Just one second.

22 THE COURT: If I went too fast I'll do it again.

23 [Pause in proceedings.]

24 THE COURT: Do you want me to go over it again?

25 MR. DICKSTEIN: Our understanding is this conference

1 was called to address certain document discovery issues that  
2 were initially raised in our January 23rd letter and to which  
3 Ms. Ranahan responded in the January 26th letter. Then we  
4 have a reply on February 13. So I think all those letters are  
5 among the ones you listed.

6 THE COURT: All right. Well, I think -- I'd like  
7 to -- I'm not -- who told you it was going to be limited to  
8 those issues?

9 There is -- the non party witness subpoenas we have  
10 coming up this Thursday but there's a [inaudible] of issues  
11 here. Who told you we're going to be limited to the January  
12 23rd letter?

13 MR. DICKSTEIN: As I recall the docket text from --  
14 when this conference was initially scheduled for last Thursday  
15 which we had to move because of --

16 THE COURT: Yes. I think we tried to schedule once  
17 before then too actually.

18 MS. RANAHAN: Your Honor, it was our understanding  
19 that all the subpoena third party issues would be Thursday  
20 including Israelite which would be -- that was our under --

21 MR. DICKSTEIN: That was our understanding as well.

22 MS. RANAHAN: We've briefed it and we're fine with  
23 it if Your Honor would like to go through it now. I haven't  
24 actually seen the February -- that was filed yesterday, the  
25 13th?

1 MR. DICKSTEIN: Correct.

2 MS. RANAHAN: Do you have a copy of it by any  
3 chance? I haven't seen it.

4 MR. DICKSTEIN: It was filed on ECF.

5 MS. RANAHAN: I missed it. Do you have --

6 MR. DICKSTEIN: Yes, you can have my copy.

7 THE COURT: Let me -- I've got a list of topics but  
8 I haven't broken them out by letter. Let me go through my  
9 topics and see what you're in a position to discuss today.

10 There's an issue in the correspondence regarding the  
11 settlement agreement between the Rolling Stones and ABKCO  
12 concerning the redactions and the confident -- and the highly  
13 confidential designation. Are you folks in a position to  
14 discuss that today?

15 MR. DICKSTEIN: Yes, we are.

16 MS. RANAHAN: Yes, Your Honor.

17 THE COURT: Okay. Well, all right. Why don't I  
18 hear from -- did you bring a copy of that with you?

19 MR. DICKSTEIN: I do. What I have, Your Honor, is  
20 an unredacted copy.

21 THE COURT: Does it show what's redacted?

22 MR. DICKSTEIN: Yes.

23 THE COURT: Great.

24 MR. DICKSTEIN: In red marker it -- in red marker it  
25 indicates what's been redacted. I'll hand this up.

1 THE COURT: Yes, please.

2 [Pause in proceedings.]

3 THE COURT: There are two agreements here. Two  
4 agreements.

5 MR. DICKSTEIN: I think there's a total of four  
6 documents, Your Honor. There are two longer agreements and I  
7 would be happy if it would help the Court to walk you through  
8 how the musical composition rights were handled in these  
9 agreements which as far as we understand that's really the  
10 only issue as to why these would be relevant. The rest of it  
11 relates to rights to sound recordings, royalties for sound  
12 recordings or whole collections of songs, some publishing  
13 rights. There were a number of issues that were live between  
14 the band and ABKCO.

15 THE COURT: Let me ask just -- I'm happy to hear you  
16 on that but let me ask one other question at the outset. As  
17 the documents are redacted are they still in your view highly  
18 confidential post redaction?

19 MR. DICKSTEIN: We do think so, Your Honor, because  
20 even as to their composition rights there are royalty payments  
21 and royalty percentages here that are still in effect. There  
22 are references to other -- to a settlement, to a dispute  
23 between the band and ABKCO, the publisher that was resolved.

24 THE COURT: Why don't I -- let me hear from you  
25 first on the redactions, the nature of what you've redacted

1 and why and then I'll hear from Mr. Ranahan. Okay?

2 MR. DICKSTEIN: Sure, Your Honor. And I'd be happy  
3 to go through this page by page if you would like. What I can  
4 say is that the redactions relate to dollar amounts that were  
5 paid to the band members. Those could be for royalty payments  
6 for either composition royalties, publishing royalties on a --  
7 not on a per song basis but that relate to a group of songs.

8 There are artist royalties, right, that relate to  
9 payments for exploitation of master recordings. There are  
10 advance payments which were made to the band which would then  
11 be recouped against royalty earnings. There are -- there was  
12 a transaction whereby I believe ABKCO sold a portion of a  
13 company, Mirage Music, to primary band members, Mick Jagger  
14 and Keith Richards, and the amount of -- the dollar amount for  
15 that payment has been redacted.

16 There is information related to sub publishing  
17 rights outside the United States which has no relevance here.  
18 That's all been redacted. There's information related to  
19 delivery obligations on the band to provide other records, a  
20 new upcoming album which again has no relation to the  
21 ownership of the musical compositions here.

22 I think in a nutshell those are the nature of the  
23 information that we redacted.

24 THE COURT: All right. Why are those redactions  
25 inappropriate in defendant's view?

1 MR. DICKSTEIN: Primarily because they --

2 THE COURT: No, no, no.

3 MR. DICKSTEIN: I apologize.

4 MS. RANAHAN: Thank you.

5 THE COURT: Maybe --

6 MS. RANAHAN: He might have some ideas but, Your  
7 Honor, there's -- so we cited a lot of authority. It's  
8 just -- it's completely inappropriate for a party to look at a  
9 relevant document, a document that they've acknowledged as  
10 relevant for ownership or for whatever reason and decide they  
11 believe --

12 THE COURT: Why is that --

13 MS. RANAHAN: Especially large froths of it are not  
14 relevant. It's --

15 THE COURT: Why is that any different -- there's a  
16 split of authority in the district court decisions on this and  
17 I'm not aware of any circuit authority. I don't think any  
18 circuit authority was cited but why is it inappropriate -- why  
19 is it any different that a party who's responding -- in the  
20 situation that exists when a party responds to a document  
21 request and looks through a file of documents or looks through  
22 a file cabinet of documents and says these documents are  
23 relevant, these documents are irrelevant; I'm producing the  
24 relevant, I'm not producing the irrelevant? I mean why does  
25 it make a difference -- why is it inappropriate to excise

1 irrelevant portions of a document?

2 MS. RANAHAN: Well, Your Honor, if you just flip  
3 through it -- I mean it is all redacted. We can't even see --  
4 I just heard for the first time it's several agreements. We  
5 can't even understand the context of this agreement with  
6 the -- if you flip through -- I mean the first eight pages  
7 are -- somehow it's marked highly confidential.

8 THE COURT: What's the date of the document you're  
9 looking at?

10 MS. RANAHAN: Sure. Okay. So this is from our --  
11 it's Docket 65. I believe it's -- actually we didn't actually  
12 file it given that it's --

13 THE COURT: No. The agreement -- I've got a  
14 couple -- I've got four different agreements here.

15 MS. RANAHAN: Okay.

16 THE COURT: Is this the October 2, 1974?

17 MS. RANAHAN: Correct, Your Honor. That's what the  
18 first -- so we have the first paragraph and then the last time  
19 it was redacted. The next page is redacted. The next page is  
20 redacted. The next page is redacted. The next page. There's  
21 no -- there's like ten pages of complete black. For some  
22 reason it's still designated highly confidential although  
23 there's absolutely nothing on these pages. I mean it goes on  
24 and on.

25 THE COURT: They probably have a problem showing



1 injury if you disclose the darkened pages.

2 MS. RANAHAN: The time blocks are going to cause  
3 some kind of irreparable damage to plaintiffs but I mean I  
4 can't even show these black pages to my client to let him even  
5 know what's happening as far as this dispute.

6 So there's -- I mean literally it's 13 pages of  
7 black and I cannot imagine that every one of these sentences  
8 and paragraphs is completely irrelevant to us understanding  
9 what's happening in this document.

10 As far as royalties, Your Honor, why -- I mean  
11 royalties show a value. They can argue it's not relevant  
12 because it's so long ago but by the same token, Your Honor,  
13 why would there be any competitive harm about how royalties  
14 were calculated in 1974. I mean what -- if they're still in  
15 effect then they should go to value and that should go to our  
16 analysis of statutory damages. They can absolutely argue  
17 materiality on these things but we don't even have a chance to  
18 understand the nature of this at all. It's -- I've never seen  
19 actions of this nature. I understand if it's a privilege.  
20 There's no claim of privilege.

21 Redactions may -- it's as if we don't have a  
22 protective order governing this case. We absolutely do.

23 THE COURT: No, but I mean the -- the scope of  
24 discovery is still limited to material that's relevant.

25 MS. RANAHAN: It's relevant and proportional to the

1 needs of the case. What is the -- what's the burden with them  
2 just lifting these black things and letting us review it?

3 THE COURT: Well, if it's irrelevant you're not  
4 entitled to it.

5 MS. RANAHAN: But how do I know?

6 THE COURT: Let me give you the following  
7 hypothetical. If you had a Title 7 action where the plaintiff  
8 was claiming that the plaintiff was fired for illegal  
9 discriminatory reasons and you had a performance review  
10 document that reviewed the performance of plaintiff and  
11 reviewed the performance of four other individuals, I mean I'm  
12 not sure why the -- why it would be inappropriate to redact  
13 the performance review of the other individuals.

14 MS. RANAHAN: Absolutely not. If it was three other  
15 bands at issue here and values of songs that weren't, that  
16 would be one thing but these are --

17 THE COURT: I think that we agree on the principle  
18 that redaction of irrelevant information is not inherently  
19 inappropriate.

20 MS. RANAHAN: I agree with that, Your Honor, but I'm  
21 not convinced that this is irrelevant and I don't think it's  
22 appropriate for -- the call to be made by plaintiff's counsel  
23 because --

24 THE COURT: But the producing party always makes the  
25 initial call on relevance.

1 MS. RANAHAN: Right. When it gets -- if you look at  
2 the cases we cited, Your Honor, it's not appropriate. Once  
3 the document itself has been deemed to be responsive and  
4 relevant it's not appropriate to then -- and you're right,  
5 that maybe -- what's the difference but the cases have found a  
6 difference. We've cited --

7 THE COURT: Well, the cases are split on that.

8 MS. RANAHAN: I haven't seen any cases, Your Honor,  
9 that hold it is appropriate to just selectively decide large  
10 swaths of a document are irrelevant. We're not convinced it's  
11 irrelevant. We don't understand why the value of royalties  
12 calculated for these songs would be irrelevant to this dispute  
13 altogether.

14 THE COURT: Let me ask you this. What -- the  
15 agreements between the Rolling Stones and ABKCO are relevant  
16 to what issue from your point of view?

17 MS. RANAHAN: They're relevant to several issues,  
18 Your Honor. Ownership, how these songs -- how these rights  
19 have been allocated over the years. If you recall, they only  
20 came to ask for this agreement because we found it on  
21 Wikipedia and they hadn't produced it as part of our  
22 ownership. So this wasn't something that was voluntarily  
23 produced. We dug it up from a public reference. It should  
24 have been part of the ownership production because it  
25 absolutely impacts the songs and the rights that are at issue

1 in this action and the way these rights are split.

2 It came about because related to the artist  
3 depositions plaintiffs were resisting those and saying they  
4 could have never had any rights. Then we look on --

5 THE COURT: You said it's relevant to ownership of  
6 rights. What --

7 MS. RANAHAN: Ownership of rights. It's relevant to  
8 the -- [inaudible] we still believe for all the reasons we're  
9 still trying to get on reconsideration before Your Honor those  
10 four internet agreements. The way that they calculate the  
11 value is relevant to our burden to rebut a high end of  
12 statutory damages. I understand they're not required if  
13 they're not seeking actual damages to establish actual damages  
14 but we as defendants are absolutely entitled to present  
15 evidence why it should be on the lower end because there  
16 were --

17 THE COURT: Let me tell you why I'm asking these  
18 questions. I think I'm going to review these in camera,  
19 review the redacted material in camera and I'm trying to  
20 under -- I want to get a list of what issues you believe these  
21 licensing agreements are relevant to and I want to determine  
22 whether or not any of the redacted material relates to the  
23 issues that you think are relevant.

24 So you tell me ownership, value of the -- value of  
25 the songs. What else?

1 MS. RANAHAN: Just as far as the -- a lot of these  
2 cases are about how it's generally -- I'm quoting from some of  
3 these cases. It's unwise to do certain portions because you  
4 don't have the context of the agreement. I can't tell what  
5 this is. I have a paragraph, I have 15 redacted pages. So  
6 the point shouldn't be that they have to only redact  
7 irrelevant stuff. Not that we have to guess what's in these  
8 black pages and justify relying --

9 THE COURT: No, but that always exists in discovery.  
10 I mean you never know what your adversary is withholding on  
11 the grounds of relevance.

12 MS. RANAHAN: We would hope to know in some sense or  
13 at least trust the judgment calls, absolutely. But, Your  
14 Honor, what I'm saying is just because they don't like -- I  
15 mean I -- I cannot imagine that all 15 of these pages are  
16 incredibly irrelevant. I mean if it's just innocuous stuff we  
17 should just be able to see it to understand what this is. We  
18 can't make sense of this.

19 THE COURT: It's not -- the Rule 26 standard is not  
20 innocuous or whatever the opposite of innocuous is. The Rule  
21 26 standard is primarily relevance and non privileged and  
22 proportional. So --

23 MS. RANAHAN: Right. Well, proportional --

24 THE COURT: It's not a question of whether it hurts  
25 them or not. It's --

1 MS. RANAHAN: Right. Absolutely. But it's  
2 proportional as far as there's no burden. I mean I think we  
3 can --

4 THE COURT: Let me come back to my question. The  
5 agreements would be relevant to ownership, to value of the  
6 compositions. What else would it be relevant to?

7 MS. RANAHAN: Definitely those two and then I just  
8 think that we want to understand what this is. I didn't know  
9 it was four agreements. All I see is one paragraph and a  
10 couple of attachments. Everything is redacted. We're just --  
11 we would just like only to be redacted things that Your Honor  
12 agrees are absolutely not relevant instead of the reverse  
13 which is we're getting just tiny little pieces of what they  
14 claim is relevant and we can't figure out how this fits into  
15 the scope of this agreement. I don't know -- it doesn't tell  
16 me this is a settlement, this is four agreements or -- I just  
17 can't make out what this is. I don't -- you'll have the  
18 agreements, Your Honor, and I trust once you look at these  
19 you'll be able to tell if any of this would shed any light but  
20 from our perspective this is not a meaningful production.  
21 This is we found a relevant document but we're going to -- we  
22 don't want you to really know what's going on so we're going  
23 to redact most of it. It just doesn't --

24 THE COURT: Are there any specific -- any other  
25 specific issues that you think the documents may be relevant

1 to? You told me ownership of the rights and value of the  
2 composition.

3 MS. RANAHAN: Right. Well, I'll just say -- right.  
4 So for value, statutory damages it's not just value but we can  
5 really -- anything that's relevant to how damages would be  
6 justly calculated in this case are relevant. We can't -- I  
7 would love to be able to tell you why I think what I can't see  
8 is relevant. Unfortunately I can't see what this is. So if  
9 something was in here that raised another lightbulb and I said  
10 wow, we could use this for this issue in this case I would be  
11 happy to do that but unfortunately I don't get that luxury.  
12 Your Honor will get to see if there -- but I don't expect Your  
13 Honor to try to figure out our best defenses and what we can  
14 use this document for.

15 But I do think ownership, the rights at issue, the  
16 value, statutory damages is a very broad category and it  
17 doesn't just have to be value. I mean the factors are endless  
18 that a jury could consider if they want to find what's just in  
19 that case.

20 THE COURT: All right.

21 MR. DICKSTEIN: Judge, if I might be heard on a  
22 couple of those points.

23 THE COURT: Yes. There's one thing I'd like you --  
24 I'm happy to hear you on anything but maybe one thing you can  
25 address at the outset is if this is produced on eyes -- on an

1 eyes of counsel only basis, is there any harm to plaintiffs?

2 MR. DICKSTEIN: I think there is. You're saying  
3 harm of designated as vanilla confidential? Is that what the  
4 Court --

5 THE COURT: I'm sorry. If it was produced as highly  
6 confidential, eyes of counsel only --

7 MR. DICKSTEIN: Right.

8 THE COURT: -- is there some risk -- is there some  
9 injury to plaintiffs?

10 MR. DICKSTEIN: Of the redacted material?

11 THE COURT: Yes, it was produced -- let me refine  
12 the question. If it -- if I ordered that it be produced in  
13 unredacted form but on eyes of counsel basis only, is there  
14 some prejudice to plaintiffs?

15 MR. DICKSTEIN: I think there would, Your Honor. I  
16 mean these are incredibly sensitive documents. This is  
17 ABKCO's premiere band that they've been working with for  
18 decades.

19 THE COURT: Is there a confidentiality provision in  
20 these agreements?

21 MR. DICKSTEIN: I don't know that there is. I know  
22 it relates to settlement of a confidential arbitration which  
23 was had been the band and the publishers. So I think --

24 THE COURT: No, but I mean if they're incredibly  
25 sensitive as I think you characterized them, one would expect



1 to see a confidentiality provision.

2 MR. DICKSTEIN: Your Honor, they may not at this  
3 time and the '70s have had the foresight to see what the  
4 Stones would become and what their --

5 THE COURT: They were pretty big by the 1970. I  
6 don't know if you were around then but I was.

7 MR. DICKSTEIN: Just for a few months, Your Honor.

8 MS. RANAHAN: I had a few years, Your Honor.

9 THE COURT: They were pretty big by then.

10 MR. DICKSTEIN: The other point I guess I would  
11 make. At the outset Your Honor asked is there any Second  
12 Circuit authority on this. We actually did cite a Second  
13 Circuit case on Page 5 of our January 24 letter. New York  
14 Times versus -- New York Times Co. v. Gonzalez, 459 F.3rd --

15 THE COURT: I think you have the better of the  
16 argument on whether or not you have the right to redact  
17 irrelevant material but I'm concerned about -- my question is  
18 if it's produced on the eyes of counsel basis only is there  
19 injury. I mean one of the points that your adversary made  
20 which I think has some weight is that obviously counsel are  
21 far more familiar with the case than I am and I may look  
22 through what you've redacted and conclude that it's irrelevant  
23 but maybe there is some length to an argument that defendant  
24 is contemplating that Ms. Ranahan might recognize that I might  
25 not. I can try to read it standing in defendant's shoes but

1 I'm not going to have all the knowledge about the case that  
2 defendant's counsel is going to have. Go ahead.

3 MR. DICKSTEIN: Well, I think she's correct that she  
4 identified two areas where these documents are potentially  
5 relevant. Ownership, but ownership of what? What we're suing  
6 on here are musical compositions and I think it's Page 14 of  
7 that document that we were just looking at which has a  
8 paragraph entitled musical compositions I believe.

9 THE COURT: This is the 1972 document?

10 MR. DICKSTEIN: I think we were looking at the '74  
11 document and it -- right, it's Page 14.

12 THE COURT: One second. Let me get to it.

13 [Pause in proceedings.]

14 THE COURT: Page 14 is an unredacted VI music  
15 publishing copyrights.

16 MR. DICKSTEIN: Correct.

17 THE COURT: Go ahead.

18 MR. DICKSTEIN: If you follow the language there it  
19 essentially says that any songs that are listed in Exhibit G  
20 to that document and that are not crossed out the ownership  
21 remains with ABKCO or its affiliate ABKCO Music AMI. And that  
22 follows on an earlier agreement which we've provided, you  
23 know, redacting the irrelevant portions, from 1972 where the  
24 songwriters Mick Jagger and Keith Richards agreed that  
25 pursuant to an earlier agreement ABKCO's predecessor is the

1 owner of the composition. That's Paragraph 3 of the '72  
2 agreement. And that earlier exclusive songwriter agreement  
3 which I just referred to was September '66 which we've  
4 produced and it expressly says that Mick Jagger and Keith  
5 Richards assigned to Gideon, which is ABKCO's predecessor, all  
6 musical works which have been written, composed, created or  
7 conceived in whole or in part by the writers or which may be  
8 created within five years thereafter.

9           So in terms of tracing the ownership of rights I'm  
10 happy to go through that again. I know it's a number of  
11 pieces of paper you have to shuffle around but all that  
12 information has been provided in unredacted, completely  
13 unredacted form except for maybe some dollar figures that  
14 relate to a number of songs.

15           And actually that brings me to the second point  
16 which Ms. Ranahan raises, potential grounds for relevance is  
17 the value. None of the dollar figures here, none of the  
18 material that's been redacted relates to specific  
19 compositions. This is the same issue that I think Your Honor  
20 may hear on these blanket internet licenses which maybe we'll  
21 get to later today. But there were payments made for whole  
22 collections, whole numbers of songs here. There's really  
23 nothing in these documents that would let you apportion those  
24 to the value of any particular song and that's what we're  
25 suing on here. We're suing on a handful of Rolling Stones

1 songs. So I think with the benefit of reviewing these  
2 documents in camera I hope and I think that the Court will see  
3 that the -- whatever relevance is to be gleamed --

4 THE COURT: Are any of the collections -- I just was  
5 handed these a few moments ago and I haven't really looked at  
6 them but are any of the collections of songs for which numbers  
7 are quoted, are any of those entire collections the subject of  
8 this action?

9 MR. DICKSTEIN: No. There are other Stones songs  
10 that are not the subject of this action.

11 THE COURT: Okay. All right.

12 MS. RANAHAN: Your Honor --

13 THE COURT: Anything else you want to tell me on  
14 this issue?

15 MR. DICKSTEIN: No, nothing else, Your Honor.

16 THE COURT: Go ahead.

17 MS. RANAHAN: Your Honor, so the argument that  
18 plaintiff's counsel made on the internet agreements was that  
19 they applied to --

20 THE COURT: Go ahead. Go ahead.

21 MS. RANAHAN: -- not just particular songs that were  
22 at issue in this case but the whole -- all of their songs.

23 THE COURT: Right.

24 MS. RANAHAN: These are values that actually go to  
25 songs in this case. While I understand perhaps it includes

1 some other Rolling Stones songs, I mean this is a real narrow  
2 window into what they've now told us still apply today which  
3 is the justification for why this is so confidentially  
4 sensitive even though they're I mean literally 40 years ago  
5 agreements. Under the protective order the only basis for  
6 them to desig -- I am absolutely fine with Your Honor's  
7 suggestion that perhaps they just produce it to the attorneys  
8 highly confidential although I'm incredibly suspect about how  
9 there's confidential harm from agreements 40 years ago that  
10 have no confidentiality provision and that we were able to  
11 find out about from Wikipedia instead of their production.

12           The Wikipedia basically set forth the terms that  
13 guess what, Brown Sugar is actually part of a co-publishing  
14 settlement agreement. That's how we found out this existed.  
15 But the idea that plaintiffs on the one hand want to suggest  
16 oh, it's confidentially sensitive because actually these  
17 values and royalties still apply today, these 40 year old  
18 royalty agreements. We can't see them although they're  
19 actually applicable to specific songs that are at issue in  
20 this case.

21           I appreciate that plaintiffs have brought a case  
22 that implicates a lot of very popular musicians and songs and  
23 want to protect them but unfortunately they're part of this  
24 case. We cannot be bootstrapped from understanding the value  
25 of the very songs that are at issue in this case.

1           Your Honor, I'm actually -- I couldn't even tell --  
2 when you guys were talking about how this is for -- I mean  
3 four different documents, from the redactions, Your Honor, and  
4 I would just ask you to -- while you're reviewing the red  
5 highlights look back at what they gave us because it's the  
6 first ten pages are -- the first 13 pages are all black. I  
7 can't tell that this is four documents. It looks to me like  
8 one document. We're going to go into a deposition of the  
9 ABKCO representative and ask him about what, what is -- I  
10 cannot tell what this is.

11           So I would just, Your Honor, ask that you -- your  
12 suggestion that perhaps we review it highly confidential,  
13 although again I don't agree with that designation at all but  
14 that would be a compromise then we could at least review it  
15 and look to see if there's anything else this can be relevant  
16 to including value, including statutory damages, including  
17 just a basic context of what this is which is really -- the  
18 case is -- I appreciate Your Honor's concern that what's the  
19 difference if counsel is making calls about holding this whole  
20 thing back just because it appears in a document that's  
21 somewhat relevant why shouldn't some of it be redacted and I  
22 appreciate that.

23           But the concerns that have been expressed are once  
24 you have found a document that is in part relevant to just  
25 decide that you're going to take away the ability to review

1 the context, understand what you're looking at, be able to ask  
2 a person at a deposition let's look at these four agreements  
3 which I can't do with what I have right now. I have let's  
4 look at this paragraph. I'm going to imagine the person  
5 reviewing it is going to say I can't tell what this is and my  
6 questions are going to be quite limited.

7           If we're going to go to the ABKCO CEO and have this  
8 document we should certainly be -- the attorney to be allowed  
9 to ask the ABKCO CEO about this agreement and they can object  
10 later to the district court if they think something should not  
11 be brought into trial but the idea that we're going to be not  
12 able to ask their own ABKCO designee about this agreement with  
13 any meaningful ability to ask about the context it doesn't  
14 seem right, Your Honor.

15           So I would request that at least so that we can ask  
16 their ABKCO CEO who has definitely seen this agreement -- I'm  
17 sure he's familiar with it -- why we shouldn't be able to show  
18 that to him and review it and ask the relevant questions.

19           THE COURT: Just let me just ask plaintiff's counsel  
20 another question. This may have come -- there are -- I'm not  
21 sure if things here have gotten unclipped or unstapled. I've  
22 gotten -- I've got a multi page document dated May 3, 1972.

23           MR. DICKSTEIN: Correct.

24           THE COURT: I've got another multi page document  
25 dated October 2, 1974.

1 MR. DICKSTEIN: Correct.

2 THE COURT: I have two letter agreements dated May  
3 3, 1972 for --

4 MR. DICKSTEIN: Those are stapled together I  
5 believe.

6 THE COURT: Yes, it's four pages total.

7 MR. DICKSTEIN: Right. Those are just two copies of  
8 the same --

9 THE COURT: Those are two copies of the same thing.  
10 They look like two copies of the same thing.

11 MR. DICKSTEIN: But different.

12 THE COURT: I have two pages that are loose and I  
13 just want to make sure -- maybe I -- one is entitled ABKCO  
14 Music, Inc., Rolling Stones writer earnings March 31, 1972.  
15 The second page is entitled ABKCO Music, Inc., summarization  
16 of settlement with Mick Jagger and Keith Richards.

17 MR. DICKSTEIN: Correct, Your Honor, and --

18 THE COURT: Is that part of something else?

19 MR. DICKSTEIN: I believe these are referenced in  
20 some of the larger agreements that you referred to earlier.  
21 That's why -- I don't believe these two loose documents you  
22 just referred to have any independent significance to --

23 THE COURT: No. But should they be attached to one  
24 of the other documents?

25 MR. DICKSTEIN: They were not. I think they were



1 referenced in --

2 THE COURT: Okay.

3 MR. DICKSTEIN: -- the '74 agreement I believe.

4 THE COURT: Is there another agreement that I should  
5 have?

6 MR. DICKSTEIN: No, Your Honor. Maybe this will  
7 help to clarify. What I said earlier that there were four  
8 agreements I think I said -- what I was just simply referring  
9 to was that there were multiple documents that we've submitted  
10 to Your Honor and we produced all of them in redacted form to  
11 defendant's counsel. So in total I guess there are two  
12 somewhat lengthy agreements, the letter, the 1972 letter  
13 agreement you referred to and then two loose documents which  
14 basically have financial information. So that's the totality  
15 of the documents we're talking about.

16 THE COURT: All right. I'm going to review these in  
17 camera to see if there's anything in the redacted material  
18 that relates to the issues that Ms. Ranahan has identified.

19 MS. RANAHAN: Your Honor, that raises another point  
20 which is that if there's references to other documents in  
21 these redacted portions we -- I couldn't see what part you  
22 were just referring to because it's a black box for me but I  
23 would believe we're entitled to try to understand the  
24 connection between this and the existing documents they've  
25 produced and again, Your Honor --

1           THE COURT: It may -- the issue you're raising  
2 sounds like it's somewhat premature. Maybe we should decide  
3 first whether or not you get the material that's been redacted  
4 and then if you think that leads you to get some other  
5 documents we can cross that bridge if as and when we get to  
6 it.

7           MS. RANAHAN: Thank you, Your Honor. I mean we  
8 would just --

9           THE COURT: Is I think what you were saying.

10          MS. RANAHAN: We would just like to be able to ask  
11 their designee about this, the ABKCO designee in deposition.  
12 I don't -- unredacted. If it needs to be highly confidential  
13 which again I mean I'm happy to address that again. We don't  
14 agree with that designation given the length and date of it  
15 but if it's relevant material still because of the royalties  
16 that are still in effect I do believe we should be able to at  
17 least ask. At least ask. They can certainly raise later that  
18 they don't think this is admissible for whatever reason but  
19 the idea that we can't even ask their designee about this  
20 agreement between them and the songwriters that are both at  
21 issue in this case about songs at issue in this case seems --  
22 I get it for what their argument -- I disagree with their  
23 internet agreement argument but the idea that now they're  
24 extending these same concepts to an agreement between  
25 plaintiffs and the artists about songs at issue in this case

1 it's over the top.

2 MR. DICKSTEIN: Judge, if I could just --

3 THE COURT: Let me just -- to make my life a little  
4 bit easier when I go through this, can you just identify the  
5 songs that -- the Rolling Stones songs that are the subject of  
6 this litigation? I've got the complaint if you can just run  
7 through them it will save me from having to go through the  
8 complaint.

9 MR. DICKSTEIN: No problem. It's Brown Sugar, Give  
10 Me Shelter, Honky Tonk Woman.

11 THE COURT: One second. Brown Sugar.

12 [Pause in proceedings.]

13 THE COURT: Go ahead. What else?

14 MR. DICKSTEIN: Brown Sugar, Give Me Shelter, Honky  
15 Tonk Woman, Jumpin' Jack Flash, Let it Bleed, Let's Spend the  
16 Night Together, Sympathy for the Devil.

17 THE COURT: What's after Sympathy for the Devil?

18 MR. DICKSTEIN: After that is Under My Thumb and the  
19 last one You Can't Always Get What You Want.

20 THE COURT: Okay.

21 MR. DICKSTEIN: Judge, if I could just be heard very  
22 quickly. To crystalize this issue, if ABKCO had a recording  
23 agreement with the Rolling Stones was part of a separate  
24 document there would be no argument that defendant's counsel  
25 would be entitled to review that. So simply the fact that

1 that happens to be part of an agreement that also discusses  
2 ownership of copyrights I don't think entitles them to review  
3 provisions about master recording rights.

4 THE COURT: There are nine Rolling Stones songs that  
5 are in issue. Let me just go through them again to make sure  
6 I got them all. Brown Sugar, Give Me Shelter, Honky Tonk  
7 Woman, Jumpin' Jack Flash, Let it Bleed, Let's Spend the Night  
8 Together, Sympathy for the Devil, Under my Thumb, and You  
9 Can't Always Get What You Want. Right?

10 MR. DICKSTEIN: That's it.

11 THE COURT: Okay.

12 MS. RANAHAN: One last point, Your Honor. The fact  
13 that we're even -- well, that's fine. Your Honor, it's fine.  
14 I think we're --

15 THE COURT: One of the other things, I think you  
16 were asked to bring were the blanket internet licenses.

17 MR. DICKSTEIN: Correct, Your Honor. After  
18 consulting with our clients what they have is our agreements  
19 with You Tube was one of the four internet companies I believe  
20 that defense counsel identified. There are no agreements  
21 between our clients and the other three entities that  
22 defendant's counsel identified. But I do have --

23 THE COURT: There's only one internet, one blanket  
24 internet license.

25 MR. DICKSTEIN: Each of the six publishers that are

1 plaintiffs, six groups of publishers that are plaintiffs in  
2 this action have a blanket agreement with You Tube.

3 THE COURT: I see. But --

4 MR. DICKSTEIN: So there are six separate agreements  
5 but there are -- none of the -- our publisher plaintiffs have  
6 agreements with the other three internet companies that  
7 defendants have identified.

8 THE COURT: Are all six licenses identical?

9 MR. DICKSTEIN: They're not. Some of them, the  
10 independent publishers, the licenses are a little bit more  
11 similar but certainly when you get to Sony ATV which  
12 administers the EMI music publishing catalog as well as Warner  
13 Music Publishing they differ dramatically. There's -- well,  
14 if Your Honor is going to review them you'll see this but  
15 there are minimum advance payments, all of which are  
16 incredibly sensitive. I'm happy to get into that if you --

17 THE COURT: All right. If you want to give those to  
18 me I'll review those also.

19 [Pause in proceedings.]

20 MS. RANAHAN: Your Honor, just one last point that I  
21 do want to raise about the redaction issue. You asked  
22 counsel --

23 THE COURT: Hold on just one second.

24 MS. RANAHAN: I'm sorry.

25 [Pause in proceedings.]

1 THE COURT: Go ahead.

2 MS. RANAHAN: You asked plaintiff's counsel what is  
3 the harm if we see it, the attorney see it and they really  
4 didn't have anything and I just would again just request that  
5 and on this issue, Your Honor, last time we were here -- we've  
6 been trying to get these four internet agreements for months  
7 as Your Honor knows and the representation was that counsel  
8 had looked at the agreements, they're not -- or at least  
9 looked at some of them or understood they were all the same.  
10 This is the very first time I've heard guess what, three of  
11 those agreements don't even exist. Why have we been -- we  
12 were at least were told they existed and that they were the  
13 same. Now we're finding out today that guess what, three out  
14 of the four entities that we've been wasting our time trying  
15 to get before Your Honor to reconsider don't even exist. That  
16 could have been -- if there would have been just some basic --

17 THE COURT: It didn't change the issue --

18 MS. RANAHAN: We still have the one. We still have  
19 the --

20 THE COURT: We dealt with all of them as a block.

21 MS. RANAHAN: I appreciate that.

22 THE COURT: So that really didn't change.

23 MS. RANAHAN: I appreciate that but I would just --  
24 the fact that they had looked at this and looked at the  
25 agreements and didn't think that they were relevant, I mean

1 they don't exist. So I appreciate it. I'm glad we're at  
2 least now having the one that is still in play before you but  
3 I just wish we had known there was one.

4 THE COURT: As I say, I don't think it would have  
5 changed anything because we dealt with all four as a block.

6 MS. RANAHAN: That's right. That's right.

7 MR. DICKSTEIN: Just if I might respond to counsel's  
8 statement. I don't believe I ever represented or my  
9 colleagues ever represented that all the agreements were  
10 identical. They're all blanket licenses. I believe that was  
11 the critical fact.

12 THE COURT: I think that's correct. All right.

13 MS. RANAHAN: I didn't suggest they're identical,  
14 Your Honor. I just thought that they existed. That's all.

15 THE COURT: Again, I've got a list of topics here  
16 but they're not broken out by -- not broken out by letter.

17 MR. DICKSTEIN: Actually, Your Honor, are we moving  
18 beyond the internet licenses?

19 THE COURT: Yes.

20 MR. DICKSTEIN: I did want to add something. Our  
21 clients are incredibly -- feel that these are incredibly  
22 sensitive documents. Not only from one publisher to the next,  
23 right, we were competitors, but also from other third parties  
24 that could conceivably get a hold of these. There are as I  
25 mentioned earlier minimum guaranteed royalty payment, dollar

1 figures in the high six and seven, seven and eight figures I  
2 believe which would be incredibly damaging if this was to  
3 become public.

4 I just want to also note for the record that while  
5 I'm not impugning the integrity of defendant's counsel I just  
6 would note that they do represent a number of these internet  
7 companies, Amazon, Veo, et cetera, and in some cases it could  
8 be hard to unring the bell. Once you see an agreement you  
9 understand how they work, what the general numbers are, I  
10 believe there's an inherent danger, a competitive danger to  
11 our clients of producing these and on top of that we don't  
12 believe they're relevant because as Your Honor will see  
13 they're entirely blanket license agreements that don't  
14 reference the songs at issue in this case.

15 THE COURT: All right.

16 MS. RANAHAN: Your Honor, can I respond to that?

17 THE COURT: Go ahead.

18 MS. RANAHAN: The notion that there's some inherent  
19 danger and that we don't have a protective order, we have a  
20 protective order in this case. There's absolutely no  
21 indication that we as a law firm, our counsel would somehow  
22 take what we know from this case and apply it to other  
23 clients. I take offense to the accusation.

24 THE COURT: I'm not sure how you unring the bell  
25 given the obligation that you have to -- you got the same



1 obligation to represent all your clients zealously.

2 MS. RANAHAN: Absolutely but we --

3 THE COURT: It's difficult -- I mean if you -- a  
4 lawyer is in a difficult position if he learns something with  
5 respect, or she learns something with respect to client A  
6 that's subject to a confidentiality provision and is then  
7 advising client B and this information may help or hurt client  
8 B. I mean it's easy for the lawyer not to explicitly pass the  
9 information on to client B. I don't think that's the issue.  
10 But what is I think more tricky for a lawyer to make sure that  
11 he or she is insulating in his or her own mental processes  
12 what they've learned from client A.

13 MS. RANAHAN: Your Honor --

14 THE COURT: That I think -- even when the -- I'm not  
15 suggesting a lawyer acting in bad faith but it's difficult --  
16 it is difficult to parse out from your psyche what you've  
17 learned in the past.

18 MS. RANAHAN: Your Honor, we're litigators. I don't  
19 do transactions and I'm not trying to take any terms to give  
20 my client some advantage. We're litigators. We deal with the  
21 facts after they happened. How we're going to -- the idea  
22 that we cannot now get information to defend our clients  
23 because we may have represented Veo who is now a defunct  
24 entity ten years ago is the most -- I mean this -- there's no  
25 authority to support this notion. We have a protective order

1 in place. We can't even get discovery now because there's  
2 some paranoid threats that we're going to potentially --

3 THE COURT: No, no, no.

4 MS. RANAHAN: Your Honor, there's no -- there's no  
5 support for this notion that we cannot review relevant  
6 documents because --

7 THE COURT: The issue really is relevance and I'm  
8 going to take a look at them to see if they are as they were  
9 represented to me but if they are as they were represented to  
10 me in the past I'm not sure that they're going to be relevant  
11 or helpful or will illuminate any issue in the case. So I'm  
12 going to look at them but if they are the blanket kind of  
13 licenses that were described previously I'm still not sure  
14 they're going to get you anywhere.

15 MS. RANAHAN: I would just request that you review  
16 our briefing on value -- and it's not just value but what is  
17 relevant to statutory damages and why -- even if it's a  
18 blanket amount why we shouldn't be able to investigate that  
19 and show that to our expert.

20 THE COURT: All right. I'm not trying to cut you  
21 off.

22 MS. RANAHAN: Also, I mean, Your Honor --

23 THE COURT: We're getting a little repetitive with  
24 arguments --

25 MS. RANAHAN: Right. I understand.

1 THE COURT: -- over the last month or so -- the last  
2 two months.

3 MS. RANAHAN: I understand, Your Honor. But we --

4 THE COURT: Let's wrap up --

5 MS. RANAHAN: If you recall there was 15 transcripts  
6 to depositions that we produced to them that were not  
7 "relevant" but because they found one sentence and one  
8 declaration Your Honor allowed those to be produced. This  
9 idea that one -- now it's down to one, not even four. No  
10 burden. You have the agreement before you. They've now at  
11 least looked to see if they had them. They've now finally  
12 investigated to see whether they actually even have these  
13 agreements. The idea that we can't now see this one agreement  
14 because of competitive confidentiality concerns, I mean we  
15 have a protective order.

16 It's as if we do not have a protective order and  
17 that we are some shop that's going to be using this for  
18 improper reasons. I can -- I am just offended by the  
19 suggestion that we can't unring the bell. Of course we're  
20 always held to the standard of if we are given information for  
21 one case we can't go using it to advantage our other clients.  
22 That's -- this is basic. The idea that we now have our boot  
23 strapped from representing zealously our own client in this  
24 case because of some threat --

25 THE COURT: That's not the issue. That's really

1 not the issue here.

2 MS. RANAHAHAN: Okay. Well, Your Honor, again, I  
3 would just request that you look at our briefing on this issue  
4 because the relevance to statutory damages is real and a jury  
5 can't consider nearly anything and if these are the rates that  
6 apply to these songs at issue whether it also applies to other  
7 songs is still relevant.

8 THE COURT: Well, I'm not -- there were a lot of  
9 songs that were around in the '60s that may be covered by  
10 these licenses that if I were to give you their titles you  
11 would have never heard of them, and if it's a license  
12 agreement that encompasses royalties for a song like Snoopy  
13 Versus the Red Baron, and there was such a song in '66 or '67,  
14 and something like Satisfaction, I'm not sure how relevant it  
15 really is or whether it really illuminates what the statutory  
16 damages should be for an infringement of Satisfaction, if  
17 there was an infringement of Satisfaction.

18 MS. RANAHAHAN: Well, that information can certainly  
19 [inaudible] our experts to make a calculation about high end  
20 songs, low end songs and their expert can dispute it and say  
21 look, this is what exactly Your Honor is suggesting but it's  
22 not appropriate to limit discovery on that basis that you --

23 THE COURT: It does -- look, I appreciate that  
24 relevance is a continuum and that it's not a black and white  
25 matter but there does -- there does come a point where the

1 relevance is so attenuated it's not even discoverable, and I  
2 appreciate that relevance for discovery is a broader concept  
3 than relevance for admissibility at trial even after the  
4 December 15 amendments to the federal rules. But there still  
5 comes a point where the relevance is so thin that it's not  
6 discoverable but I will take a look at the license agreements  
7 to see what they provide.

8 MR. DICKSTEIN: Just to add, Your Honor, because I  
9 think you may have been under a misconception. The  
10 agreements, they don't just relate to songs from the '70s,  
11 even obscure ones like Your Honor mentioned. These are  
12 catalog wide agreements which are in some cases for some  
13 publishers millions of songs.

14 MS. RANAHAN: It's a valid agreement. It would  
15 cover every song at issue in this case. It would cover every  
16 song.

17 THE COURT: Enough. I've heard enough on this.  
18 Okay. We've argued this before and we just argued it again.  
19 I think the issues have been ventilated.

20 Again, I've got -- one of the issues here is a  
21 request by plaintiff to depose Klanos and a request for the  
22 Klanos [Ph.] documents. Are you in a position to address  
23 that?

24 MR. DICKSTEIN: I don't believe that's a live issue,  
25 Your Honor. We've already been speaking with Mr. Klanos's

1 counsel. We're setting a date for a deposition.

2 THE COURT: Okay. Fine. There was another issue in  
3 the correspondence as to due diligence files from defendant's  
4 transactional counsel.

5 MR. DICKSTEIN: Yes, Your Honor, that is an issue  
6 and I'm prepared to address that.

7 THE COURT: That was because there were three or  
8 four additional documents that were produced.

9 MR. DICKSTEIN: And when those documents were  
10 produced I believe the representation was made they were found  
11 in offsite storage of one of their transactional counsels and  
12 we're simply asking them to look at any other files. I think  
13 there are half a dozen concert recording acquisitions that  
14 occurred here. That's what makes up defendant's collection as  
15 it pertains to the songs that are relevant. We're just asking  
16 them to go look at those documents. I think they have an  
17 obligation to do that under Rule 26 and to produce any  
18 responsive documents.

19 MS. RANAHAN: Your Honor, we told them -- okay.

20 THE COURT: Have you finished?

21 MR. DICKSTEIN: And just to drive that point home.  
22 What I think it's relevant to is the issue of willfulness.  
23 We've already discovered documents and we've -- these were  
24 subject of questioning of defendant's president last week that  
25 defendants had reason to believe that they lacked certain

1 rights to these compositions -- to these recordings that they  
2 acquired. Certainly to the compositions.

3           So we do have a reason to think that further  
4 discovery as to what their transactional counsel knew at the  
5 time, what documents are being exchanged with the vendors of  
6 these recordings. Certainly we're not seeking privileged  
7 communications with defendants but to the extent these types  
8 of marketing materials or other communications were exchanged  
9 which would illuminate what defendants knew about the nature  
10 of the rights they were acquiring in these recordings, I think  
11 that's going to be highly relevant to the issue.

12           THE COURT: Well, presumably I mean if there were  
13 such documents it would be in defendant's interest to produce  
14 them.

15           MR. DICKSTEIN: Well, Your Honor --

16           THE COURT: If there were documents saying that they  
17 had -- that they were receiving the rights to do X, Y and Z I  
18 would think they would be very interested in producing them  
19 and using them. I'm not sure why there would be an  
20 interest --

21           MR. DICKSTEIN: That may be right, Your Honor, but  
22 what we've discovered is actually the documents say the  
23 opposite. They say that it's likely the vendors do not own  
24 the rights.

25           THE COURT: Let me -- the issue here really is I

1 guess what repositories have been searched.

2 MS. RANAHAN, have --

3 MS. RANAHAN: Thank you.

4 THE COURT: Has the defendant reviewed the files --

5 MS. RANAHAN: Yes.

6 THE COURT: -- of transactional counsel?

7 MS. RANAHAN: Yes. In fact, when we located these  
8 three which were based on a specific request by plaintiff's  
9 counsel our transactional counsel did search his whole files  
10 and I've told plaintiff's counsel multiple times that he in  
11 discovering these hard copy things that were offsite and  
12 somehow didn't make it into his electronic records he dug out,  
13 found a hard copy. I actually told plaintiff's counsel this.  
14 To think he would actually appreciate the extra effort we had  
15 gone to. Instead I got a barrage of accusations that we  
16 hadn't done diligence because we hadn't searched the facility  
17 before.

18 When our transactional counsel located this he did  
19 search the facility and I since updated plaintiff's counsel to  
20 clarify that, that this wasn't some run in, grab one file and  
21 leave. He actually then surveyed because as Your Honor  
22 recognizes it's in our interest to have anything relating to  
23 diligence produced. Our client did extensive diligence. It's  
24 just not the type that plaintiff's counsel is imagining  
25 happened.



1           So we have done extensive searches on top of  
2 searches on top of searches and this offsite storage facility  
3 has been exhaustively searched. I've told plaintiff's counsel  
4 that. This issue keeps coming up every hearing we are before  
5 you, Your Honor. This is the fourth time we talked to you  
6 about diligence files and the fourth time I've told you we  
7 have done everything we can to search every diligence file and  
8 turn anything over we can locate. This was a very specific --

9           THE COURT: This was with respect to all  
10 transactional counsel?

11           MS. RANAHAN: Yes. Right. Exactly, Your Honor,  
12 yes.

13           THE COURT: Mr. Dickstein, that sounds sufficient.

14           MR. DICKSTEIN: I think that's the first time I've  
15 heard the representation made that they've searched the files  
16 of all transactional counsel for all of these, and if that's  
17 the case and nothing responsive was located then I don't think  
18 there's anything to discuss at this point.

19           THE COURT: I think I agree with you.

20           There was a request by plaintiff for artist  
21 deposition transcripts from other actions.

22           MR. DICKSTEIN: That's been resolved.

23           THE COURT: There was an issue about the defendant's  
24 production of documents reflecting the date of the first  
25 downloads and defendants represented that they did not have

1 documents reflecting the date of the first downloads.

2 MR. DICKSTEIN: We're going to pursue that issue in  
3 discovery, the depositions, but it's not a live issue before  
4 Your Honor.

5 MS. RANAHAN: I think Your Honor dealt with that at  
6 the last hearing.

7 THE COURT: Well, it's raised in the correspondence  
8 subsequent to December 20th.

9 There's an issue that's raised in several of the  
10 letters regarding new website, wolfgangs.com. Essentially  
11 what it does -- they used to have wolfgangsvault.com and now  
12 that redirects if you type in wolfgangsvault.com you'll get  
13 sent over to wolfgangs.com. So what we were seeking was an  
14 agreement that that new domain is part of this litigation.  
15 Defendant's counsel refused. So what we're prepared to do is  
16 file a motion to supplement. We can probably get that on file  
17 today or this week for sure.

18 We don't think it's really a dispute here. In fact,  
19 defendant's principal explained that Wolfgangs is Wolfgangs  
20 Vault or something to that effect, that it's merely a new  
21 iteration of the website they've had from the beginning. So I  
22 don't know why we're being put to the burden of preparing a  
23 formal motion to supplement our pleading.

24 THE COURT: You're going to make a motion to amend  
25 to add it?

1 MR. DICKSTEIN: It would be a supplementation I  
2 believe because it's something that happened after the filing  
3 of the initial complaint. So that's the issue with the new  
4 website or new domain.

5 Separately, there's an issue that I believe was in  
6 December late last year we discovered that were hundreds of  
7 new concert recordings. I shouldn't say new. These are old  
8 recordings but they were newly added to all of defendant's  
9 websites, or I should say at least the new wolfgangs.com  
10 website as well as the Concert Vault website which they've had  
11 in use since the beginning of this lawsuit.

12 We've asked several times for updated discovery,  
13 supplemental discovery with respect to those other concert  
14 recordings. I don't think it's disputed that there has not as  
15 a matter of fact been any discovery provided as to those  
16 additional recordings. Defendants are taking the position  
17 that they don't have to. I don't want to speak for them but I  
18 believe they're taking the position they don't have to provide  
19 discovery simply because we didn't identify those specific  
20 concerts in the exhibit to our complaint.

21 But if Your Honor looks at the complaint and looks  
22 at the document requests, everything in this case is focused  
23 on any exploitations of our musical compositions that are at  
24 issue in the lawsuit.

25 THE COURT: Well, I'll hear from Ms. Ranahan but I

1 mean I looked at the complaint this morning and Paragraph 65,  
2 a non exhaustive list of the web links to defendant's  
3 infringing website Concert Vault that contain unauthorized  
4 uses of plaintiff's musical works is included in Column 4 of  
5 Exhibit A.

6 Paragraph 69 says pretty much the same thing.  
7 Paragraph 74 says the same thing. Paragraph 82, Paragraph 89.  
8 I mean the complaint repeatedly says the list of accused web  
9 links is a non -- is a non exclusive list.

10 But having said that, go ahead.

11 MS. RANAHAN: Thank you, Your Honor. So what  
12 actually happened was that our client hasn't added any new  
13 concerts. These are concerts that have always been up on  
14 Concert Vaults since the outside of this litigation in 2015.  
15 What happened was our client amended the -- if you can sort of  
16 switch out your domain so it becomes a new website. He did it  
17 so it became a shorter website but if -- it's basically like  
18 if you went to Concert Vault it takes you to a new place. So  
19 it's not -- they didn't launch a new website. They shortened  
20 their domain name. So anyone that already had it or was  
21 already part of the Wolfgang network would just be directed to  
22 that new shorter domain.

23 That new -- so the reason that that -- so they're  
24 plaintiffs because they hadn't noticed since 2015 200 of the  
25 concerts that they're claiming are at issue are now trying to

1 use the domain name change as a reason of this new launch  
2 which is not true. Our clients haven't launched anything new  
3 since this lawsuit as far as new concerts with the songs at  
4 issue.

5 So because plaintiffs hadn't discovered for whatever  
6 reason these 200 concerts in 2015 and when they amended their  
7 complaint in 2016 they're now using the domain name switch as  
8 some justification to say there's 200 new recordings that were  
9 added.

10 Our position, Your Honor, is that -- I appreciate  
11 what the complaint from 2015 says, non exhaustive list, but  
12 there's absolutely no reason that these 200 concerts couldn't  
13 have been originally included including 2016. We're now in  
14 2017 and we're going to add 200 new concerts, expand the  
15 potential liability. The statute of limitations for copyright  
16 goes back three years. Are we going to be going back now five  
17 years to the exploitation of these songs because the complaint  
18 was filed two years ago and it took two years for plaintiffs  
19 to identify these recordings?

20 THE COURT: The alternative though is I guess they  
21 file a new complaint.

22 MS. RANAHAHAN: Absolutely. That's what we want. We  
23 want the -- we don't want that. We would rather them stop  
24 filing lawsuits. Our client isn't infringing anything. But  
25 to the extent that they're going to now try to expand

1 liability by a third because they didn't sign these --

2 THE COURT: Well, there's nothing that would  
3 preclude them from filing a new complaint.

4 MS. RANAHAN: Of course not. We don't argue that  
5 there is but to try to pump up --

6 THE COURT: Why is that a better situation?

7 MS. RANAHAN: Your Honor, because obviously we're  
8 hopeful we can resolve this one on what's before us now and  
9 that that won't ever be necessary. I realize --

10 THE COURT: It's the same issue. I mean if -- let's  
11 assume you prevail. Don't you -- based on the current record  
12 I suppose if -- would those new recordings be covered by a  
13 resolution in this case?

14 MS. RANAHAN: If we settle this case I would  
15 certainly hope so, that we would -- we would settle the  
16 issues. Whatever rights were disputed would be --

17 THE COURT: Let's -- I'm not sure if you mean  
18 settle, settle or settle by agreement or something else but if  
19 there's a summary judgment motion and you prevail with respect  
20 to what's in the complaint in 15-CV-4025, is it going to cover  
21 those other recordings?

22 MS. RANAHAN: Well, I would think it would be at  
23 least persuasive authority or instructive on what happened  
24 with the rest.

25 THE COURT: If they're included in this action then

1 they're clearly covered by whatever disposition you get here.

2 MS. RANAHAN: Right.

3 THE COURT: If you prevail then your client never  
4 gets bothered again with respect to those other recordings.  
5 I'm not sure why it doesn't make sense to include those  
6 recordings here.

7 MS. RANAHAN: I appreciate it, Your Honor. I mean  
8 we weighed the benefits and the drawbacks before our client  
9 and our client is not interested in expanding the scope of  
10 this case. If that means plaintiffs are able to amend with  
11 the district court that's fine. If it means a new lawsuit  
12 that's fine but I understand the pros and the cons. We raised  
13 those with our client and that's the position that we're  
14 taking that -- at this juncture in this case when we're trying  
15 to end discovery, not expand it to 200 new concerts and  
16 finding all sorts of -- I mean, you have to keep in mind, Your  
17 Honor, these acquisitions were not just one source. I mean  
18 they came from many different sources. These downloads  
19 require a lot of work to try to get up to speed on all of  
20 these discovery obligations to now go back to 200 more  
21 concerts. It's from our perspective too late. There's no  
22 reason for the delay. These were up since 2015. Plaintiffs  
23 could have easily --

24 THE COURT: The question is do you do it in this  
25 action or you do it in another action.

1 MS. RANAHAN: Right. And I understand that.

2 THE COURT: It's not --

3 MS. RANAHAN: I understand that.

4 THE COURT: -- the headache for your client goes  
5 away.

6 MS. RANAHAN: I understand. If I could convince my  
7 client of that, Your Honor, we'd be in a different position  
8 here but it's not the route we're going to go and that's -- I  
9 realize that it might not be the most -- what Your Honor would  
10 choose or maybe even what I would choose but that's what we're  
11 left with based on what our client wants to do.

12 MR. DICKSTEIN: Judge, if I could address that.

13 THE COURT: Hold on one second.

14 [Pause in proceedings.]

15 THE COURT: I just want to double check the scope of  
16 the reference here.

17 [Pause in proceedings.]

18 THE COURT: I've got it for general pretrial. It's  
19 not just discovery. It's for general pretrial. So if you  
20 want to make a motion to amend or to supplement you can make  
21 it in front of me. It should be made in front of me.

22 MR. DICKSTEIN: I appreciate that, Your Honor.  
23 Again, I think we're sort of conflating two issues. We do  
24 intend to add the new domain. Ms. Ranahan says it's just a  
25 shortening. Fine. Whatever. They went from Wolfgang's Vault



1 to Wolfgang, fine. There's an entirely separate issue. This  
2 is a core discovery issue as to whether they have to provide  
3 discovery as to concerts that include our musical works that  
4 are listed in our complaint.

5 This is not expanding the scope of the claims. It's  
6 simply asking that defendants fulfill their discovery  
7 obligations. The complaint is drafted with respect to musical  
8 compositions. Any performance of those musical compositions.  
9 The discovery --

10 THE COURT: The discovery requests in issue -- I  
11 mean I'm not sure this would be 26(a)(1) material because  
12 their 26(a)(1) obligation extends to documents they produce in  
13 support of a defense, not documents that support your claims.

14 What is the discovery request -- the discovery  
15 request that you believe requires supplementation, what does  
16 it provide?

17 MR. DICKSTEIN: It may take me just a second to  
18 locate that, Your Honor.

19 THE COURT: Sure.

20 [Pause in proceedings.]

21 THE COURT: Is it attached to one of the letters?

22 MR. DICKSTEIN: It is, Your Honor. I'm trying to  
23 find that among the --

24 THE COURT: If you can -- sure.

25 [Pause in proceedings.]

1 MR. DICKSTEIN: I think it's an attachment to our  
2 January 23 letter, Docket 69.

3 THE COURT: One second. Let me get there.

4 MR. DICKSTEIN: Sure.

5 [Pause in proceedings.]

6 THE COURT: It's Exhibit C?

7 MR. DICKSTEIN: Correct.

8 THE COURT: Which request you believe captures these  
9 other recordings?

10 MR. DICKSTEIN: I'll go through those, Your Honor,  
11 but I would note that virtually every request includes the  
12 term audio footage or video footage which in the definitions  
13 on Page 6 it means any audio or audio/visual in the case of  
14 video recording of any nature regardless of the median in  
15 which the recordings contain --

16 THE COURT: Which definition are you --

17 MR. DICKSTEIN: I'm sorry. It's V and W on the  
18 bottom of Page 6 of Exhibit C to our January 23rd letter.

19 THE COURT: You got the January 23rd letter?

20 MS. RANAHAN: I'm just pulling it up right now, Your  
21 Honor.

22 [Pause in proceedings.]

23 MR. DICKSTEIN: If Your Honor is there I can go on.

24 THE COURT: Yes, go ahead.

25 MR. DICKSTEIN: Sure. So those definitions I just

1 read from V and W on the bottom of Page 6 for audio footage  
2 and video footage, it's essentially any recording of any  
3 nature and if you look at the request -- so, for example --

4 THE COURT: Musical works is defined where?

5 MR. DICKSTEIN: Correct. So that's T, definition T  
6 on Page 6.

7 THE COURT: Okay. Go ahead.

8 MR. DICKSTEIN: It says the musical compositions  
9 identified in Exhibit A to the complaint and any of them. It  
10 doesn't reference specific concert performances or specific  
11 web links. It's any musical works.

12 So I could probably point out a dozen requests in  
13 this document request but just to start with No. 6 on the  
14 bottom of Page 7. All documents and communications concerning  
15 the creation of any audio footage and/or video footage  
16 containing or embodying any of the musical works. There's --  
17 if you go up one there's a request concerning the sequence or  
18 chain of title of any such audio or video footage containing  
19 or embodying any of the musical works.

20 No. 7, all documents and communications concerning  
21 any reproductions of any audio footage and/or video footage  
22 containing or embodying any of the musical works. I can go on  
23 and on frankly.

24 MS. RANAHAN: Your Honor, we didn't limit our  
25 electronic searches by any means based on the 200 that they

1 hadn't identified or the rest. The only items that they're  
2 now asking for really are revenue information so that they can  
3 expand what they claim to be the actual damages that they're  
4 trying to establish their disgorgement.

5           So this isn't -- it's not a huge -- this isn't a  
6 bunch of communications or anything. It's really just we were  
7 teed off. We looked at the recordings that they identified in  
8 the complaint because that's what we believe them to be moving  
9 on. I mean we had obtained a lot of --

10           THE COURT: I mean V and W -- the complaint  
11 repeatedly says that the websites referred to in there,  
12 referred to in the complaint --

13           MS. RANAHAN: Non exhaustive.

14           THE COURT: -- is a non exclusive list. And V and W  
15 define audio footage and video footage independently of the  
16 websites that are in Exhibit A to the complaint.

17           MS. RANAHAN: Right. Your Honor --

18           THE COURT: I think they have the better argument  
19 here but go ahead.

20           MS. RANAHAN: I mean we're on notice of the  
21 recordings we believe they're complaining about from their  
22 complaint in 2015. We teed all our discovery off of those  
23 recordings. We've obtained recordings from many different  
24 sources and assumed those that they hadn't identified were not  
25 ones that they were taking issue with.

1           So now when we have a month left in discovery all of  
2 a sudden --

3           THE COURT: They were recordings that contained or  
4 recordings that contained the same songs that they were suing  
5 on, why would you assume that they were giving a pass to those  
6 recordings?

7           MS. RANAHAN: What I'm saying is we didn't limit our  
8 discovery in any way except for when we gave them the specific  
9 revenue information that they asked for about the recordings  
10 that they had identified. So to the extent it covered  
11 communications or agreements that were relevant to diligence,  
12 we produced it. To the -- I don't know exactly what they  
13 think is missing except for every spreadsheet that we created  
14 which is many that included information that went back three  
15 years based on the statute of limitations. They're now asking  
16 us to go back and redo every spreadsheet we've made in this  
17 case. Again, many, many spreadsheets with -- we're in our  
18 last month of discovery. We have all the depositions  
19 scheduled. Literally we had five scheduled this week that we  
20 just moved because of all the hearings.

21           We're now supposed to go back and redo every  
22 spreadsheet? I mean it's a lot of work.

23           THE COURT: I guess the question I have though is  
24 look, if one of the songs that they're suing on is Brown Sugar  
25 and you have a concert recording -- you have a recording of a

1 concert that took place -- I'm pulling dates out of the air.  
2 May 1, 1985 that's identified in the complaint.

3 MS. RANAHAN: Yes.

4 THE COURT: And you have the recording of a concert  
5 that took place on May 5, 1985 which is not identified in the  
6 complaint, why would you assume that they were -- and given  
7 that the complaint repeatedly says it's a non exclusive list,  
8 why would you assume that they're giving a pass with respect  
9 to the May 5th concert when they're asserting their right,  
10 plaintiff's rights with respect to the May 1 concert?

11 MS. RANAHAN: Well, based on the complaint, Your  
12 Honor, we assumed that they had -- there was no reason they  
13 couldn't have found the 200 that they didn't find until two  
14 years later. The same --

15 THE COURT: No, but -- is it rational to assume that  
16 they would be giving a pass with respect to a concert four  
17 days later that involved the same songs?

18 MS. RANAHAN: There are different acquisitions.  
19 There are different rights. Plaintiffs might not claim rights  
20 to certain concerts or might not be claiming certain  
21 acquisitions. So yes, I mean we assumed they had done their  
22 full diligence and every --

23 THE COURT: No, but I mean they're asserting claims  
24 based on the compositions.

25 MS. RANAHAN: Yes.

1 THE COURT: Based on the songs.

2 MS. RANAHAN: Right. But if they --

3 THE COURT: If the Rolling Stones were performing  
4 for five nights at Madison Square Garden in 1985 from May 1 to  
5 May 5th let's assume, and they're suing with respect to a  
6 reporting of the May 1 concert and they're doing the same set  
7 on May 5th that they did on May 1, is it rational to assume  
8 that somehow they're excluding the recording of the May 5th  
9 concert?

10 MS. RANAHAN: When we had discovery discussions  
11 about what they wanted for all these spreadsheets it was  
12 narrowed to the concerts identified in Exhibit A. So that's  
13 what we based all of our discovery on. It was never also  
14 make --

15 THE COURT: Was that agreement memorialized  
16 somewhere?

17 MS. RANAHAN: I mean these were extensive  
18 discussions that happened for two years and --

19 MR. DICKSTEIN: Your Honor, that agreement never  
20 took place.

21 THE COURT: Is --

22 MS. RANAHAN: I don't have a --

23 THE COURT: Hold on. Hold on. Hold on. Let me ask  
24 my question before you try to answer it. Is there an email or  
25 a letter where -- that memorializes an agreement between the

1 parties to limit production to the videos -- to the recordings  
2 identified in the complaint?

3 MS. RANAHAN: That was the understanding from --  
4 based on Exhibit A and what we were asked to do for the  
5 spreadsheets because these were spreadsheets that were created  
6 based on existing data for this lawsuit based on business  
7 records.

8 THE COURT: Is there a document that memorializes  
9 the under -- an understanding between the parties as to the  
10 scope of the defendant's production obligation? That is, is  
11 there docu -- is there documentary evidence, is there  
12 documentary evidence that memorializes an understanding that  
13 defendant only has to produce information with respect to the  
14 concert recordings identified in the complaint?

15 MS. RANAHAN: I would have to check, Your Honor.  
16 I'm not exactly sure about that sitting here today.

17 THE COURT: Unless --

18 MR. DICKSTEIN: Actually --

19 THE COURT: Unless there's documentary evidence  
20 memorializing such an agreement it seems to me that the  
21 plaintiff has the better argument here as to the scope of  
22 what's covered by their -- by the discovery request that's  
23 annexed as Exhibit C to the January 23rd letter.

24 Unless there's an explicit agreement sort of the  
25 notion that they're seeking information with respect to one



1 particular concert recording that has a song in which they're  
2 claiming ownership rights in that they'd be seeking that with  
3 respect to one concert recording but not seeking it with  
4 respect to another concert recording doesn't seem reasonable.

5 MS. RANAHAN: Well, because of the way that our  
6 client acquires these he doesn't assume that he needs to -- if  
7 they're all identified or mentioned or discussed he didn't  
8 think that every acquisition was on the table. There's just  
9 some that perhaps plaintiffs weren't taking issue with. I  
10 don't -- we have no idea why the 200 it took two years to  
11 bring up and when we have one month left in discovery or two  
12 months when they first raised it why now all of a sudden -- I  
13 don't know why this couldn't have been raised two years ago, a  
14 year and a half ago. Now we're here at the last month of  
15 discovery and we're going to go back and redo I don't know  
16 what. I mean I don't even know exactly what plaintiffs want  
17 us to do. It's just been here's 200. Are we supposed to  
18 start over? Are we starting all discovery over? I don't know  
19 what exactly is being sought by this.

20 MR. DICKSTEIN: Defendants are still producing  
21 spreadsheets as recently as the night -- midnight before I  
22 took a deposition of their president. They continued --

23 THE COURT: I'm not sure if Ms. Ranahan was in mid  
24 sentence or not.

25 MR. DICKSTEIN: My apologies. I thought she had

1 finished.

2 THE COURT: I'm not sure. Had you finished?

3 MS. RANAHAN: I don't even know, Your Honor. It's  
4 fine. Go ahead. Maybe.

5 MR. DICKSTEIN: A couple of points, Your Honor.  
6 Discovery is not over. They're still producing documents  
7 essentially on a rolling basis still but -- and she asked why  
8 didn't we raise this earlier. We don't believe these  
9 recordings were on their websites when we filed the lawsuit.  
10 We had a number of paralegals scouring their websites to look  
11 for to see what performances of these musical works we're  
12 claiming are up on the websites. What we found we put in the  
13 complaint.

14 A number of months go by, maybe a year goes by. We  
15 are looking again and we say oh, wait a minute, there's more  
16 stuff there. I think the next day or two I sent an email. I  
17 think it was December 16th I sent an email to Ms. Ranahan and  
18 defendant's counsel saying hey, we've identified about 250 new  
19 recordings. It doesn't appear you produced any discovery on  
20 this. We assumed all along that we had everything. As soon  
21 as we found that out we raised it with defendant's counsel.

22 MS. RANAHAN: Again, Your Honor, these weren't new.  
23 They were up all along. They were up all along. I mean the  
24 idea -- the paralegals just didn't find them. So we assumed  
25 they weren't at issue. Now they're apparently at issue. So

1 we'll do what Your Honor requires us to do but this is really  
2 late in the game to be adding 200 recordings when the original  
3 complaint only identified a few hundred.

4 THE COURT: Wait. Look, you finish up.

5 MS. RANAHAN: To the extent Your Honor orders  
6 anything we're just going to -- I imagine then we'll just be  
7 keeping the same statute of limitations period which is the  
8 time the complaint was filed to three years prior instead of  
9 now a five year -- because of the two year delay in  
10 identifying these we're not going to turn this into a five  
11 year statute of limitations for what they can reach back to.

12 THE COURT: That is going to be a -- is not a  
13 question for today. Today we're talking about discovery  
14 issues but the complaint is drafted not in terms of a complete  
15 list of infringing websites. The complaint is listed in terms  
16 of compositions to which the plaintiffs are claiming rights  
17 and the complaint repeatedly says that the list of websites is  
18 a non exclusive list of websites.

19 The way the request for production of documents is  
20 drafted it reaches all recordings -- let me just get to the  
21 definition. It does reach all recordings containing the  
22 musical works in issue and it does not limit it to the  
23 recordings that are identified in the complaint.

24 As I said in my questioning, I mean the notion that  
25 the plaintiffs would be asserting the rights they're claiming

1 with respect to a concert that took place on a particular date  
2 but not asserting those rights with respect to a concert in  
3 which the same song was performed on a different date seems  
4 unreasonable.

5 So to the extent that the -- is there some place  
6 where you identified these additional recordings?

7 MR. DICKSTEIN: So if you look at our December 19th  
8 letter, it's Docket 59.

9 THE COURT: One second. Let me get there.

10 [Pause in proceedings.]

11 THE COURT: The December 19th I don't think I have  
12 here.

13 MR. DICKSTEIN: I can --

14 THE COURT: One second. One second. Maybe I have  
15 it over here. Hold on.

16 [Pause in proceedings.]

17 THE COURT: I've got December 19, Docket 59. Go  
18 ahead.

19 MR. DICKSTEIN: Exhibit C to that letter.

20 THE COURT: Okay.

21 MR. DICKSTEIN: That's a list of -- it's an email I  
22 sent to Ms. Ranahan and her co-counsel on December 16th of  
23 last year and it includes in that email a spreadsheet of I  
24 think it's about 250 concert recordings that we were able to  
25 identify that we believe defendants have added. Now, maybe

1 they were there from the beginning and we missed them. I find  
2 that hard to believe but in any event --

3 THE COURT: It starts with a Good Hearted Woman,  
4 6/15/84.

5 MR. DICKSTEIN: Correct. And I would just say these  
6 are the ones we've been able to locate. So I think the  
7 purpose of discovery is if we have a good faith belief that  
8 defendants are infringing they've got to provide us  
9 information as to any concert performances of these  
10 compositions.

11 I would also note it's not just revenue information  
12 that we're seeking. These are some pretty basic information  
13 that we're seeking with respect to all these recordings. When  
14 they were -- from whom they were acquired, when they were put  
15 on defendant's websites, the number of downloads, how much  
16 money they made from downloads, streaming history, et cetera.  
17 I think Ms. Ranahan knows the various spreadsheets that --

18 THE COURT: On this issue I'm going to direct that  
19 defendants supplement their discovery with respect to the  
20 recordings identified in Exhibit C of plaintiff's 12/19/16  
21 letter.

22 MR. DICKSTEIN: Judge, if I might. I just want to  
23 make sure Your Honor is clear. This is a list of additional  
24 recordings of our compositions that we were able to identify.  
25 To the extent there are others, I do think it's defendant's

1 burden to produce discovery with respect to those. Maybe this  
2 is it.

3 THE COURT: I don't know if there are any others.

4 MR. DICKSTEIN: Neither -- well, neither do we.  
5 Maybe it's -- ten days ago but I think it's --

6 THE COURT: Having received this ruling I would  
7 think that -- I'm sure that Ms. RanaHan is going to explain to  
8 her client what it means and it's in her client's interest to  
9 do a universal search and to try to search for documents with  
10 as few iterations -- a few go rounds as possible.

11 There was an issue in the correspondence about  
12 Sagan's personal financial information. Is that still an  
13 issue?

14 MS. RANAHAH: That was dealt with at the last  
15 hearing.

16 MR. DICKSTEIN: It's not a live issue right now.

17 THE COURT: Deposition -- is there an issue  
18 regarding cooperation concerning deposition scheduling?

19 MS. RANAHAH: No.

20 MR. DICKSTEIN: I don't believe so, Your Honor. We  
21 had scheduled depositions this month but for a number of  
22 reasons, including the multiple court conferences this week,  
23 we've reached an agreement with defendant's counsel to adjourn  
24 those.

25 We do have a proposed revised scheduling order we'd

1 like to submit to Your Honor.

2 THE COURT: We'll get to that at the end.

3 MR. DICKSTEIN: Sure.

4 THE COURT: There was an issue raised in the  
5 correspondence regarding exhibits from other -- deposition  
6 exhibits from other actions that were designated as  
7 confidential by other parties and the defendant's response in  
8 substance was that it's identified -- the designating party  
9 has identified the judges and basically said the ball is in  
10 your court to seek relief from either the judge who entered  
11 the protective order or from the party who designated the  
12 material confidential. Is that still a live issue?

13 MR. DICKSTEIN: It's not a live issue, Your Honor.

14 THE COURT: In defendant's January 23rd letter there  
15 was an issue concerning four deposition exhibits that  
16 plaintiff was seeking.

17 MR. DICKSTEIN: I think similarly -- we're going to  
18 continue to pursue that with defendants. I don't think it's  
19 ripe for Your Honor at this point.

20 THE COURT: Okay. Israelite you want it put off  
21 until Thursday?

22 MR. DICKSTEIN: I think we would like to do that,  
23 Your Honor.

24 THE COURT: Okay. All right. That's my -- that  
25 covers all the issues I could identify in the correspondence.

1 Are there other issues that -- are there other issues I've  
2 overlooked from plaintiff's point of view?

3 MR. DICKSTEIN: I don't believe so, Your Honor.  
4 Just the updated schedule.

5 THE COURT: Any other discovery issues that I've  
6 overlooked from defendant's point of view?

7 MS. RANAHAN: No, Your Honor.

8 THE COURT: Talk to me about scheduling.

9 MR. DICKSTEIN: So what we've proposed, and I can  
10 hand up a proposed second revised civil case discovery plan.  
11 Why don't I also hand up a copy of the current schedule.

12 THE COURT: Thank you.

13 MR. DICKSTEIN: As Your Honor may recall in August  
14 we amended the schedule. Then I believe in December Your  
15 Honor entered an order that all discovery is extended until  
16 the end of February. So several of the dates in that August  
17 order have not been updated.

18 In addition, just because of the discovery issues  
19 we're handling and deposition scheduling issues we've already  
20 agreed with defendants as I mentioned to continue depositions  
21 through March. So that's what we're proposing to do and then  
22 expert discovery would come afterwards.

23 THE COURT: This is on consent?

24 MR. DICKSTEIN: Yes, I believe.

25 MS. RANAHAN: Yes, Your Honor.



1           THE COURT: Are you changing any dates before Judge  
2 Ramos?

3           MR. DICKSTEIN: No, Your Honor. I believe there's a  
4 conference scheduled for March 8th which we're keeping.

5           THE COURT: Okay. I will approve the revised  
6 schedule to which the parties have agreed.

7           MR. DICKSTEIN: Thank you, Your Honor.

8           THE COURT: Let me go off the record for a minute.

9                           [Off the record.]

10          THE COURT: We're back on the record. I've asked  
11 counsel to let me know either Thursday or sometime thereafter  
12 whether or not they think a settlement conference makes sense  
13 here.

14                   Anything else we should be considering today from  
15 plaintiff's point of view?

16          MR. DICKSTEIN: No, Your Honor. I was wondering if  
17 maybe the Court could list the motions it intends to address  
18 on the Thursday conference. I know that the docket entry said  
19 motions to quash. So I --

20          THE COURT: We have Israelite, David Burn and Keith  
21 Richards.

22          MR. DICKSTEIN: I believe maybe it hasn't hit the  
23 docket yet, Michael Stipe, REM lead singer, had filed a  
24 motion in Georgia which was -- an order was entered  
25 transferring it to this Court but maybe it hasn't made its

1 way.

2 THE COURT: I don't think -- as of yesterday -- can  
3 you check the docket? As of yesterday I don't think the  
4 papers had arrived here.

5 [Pause in proceedings.]

6 THE COURT: As of -- well, Mr. Hampton is looking at  
7 the docket sheet right now. I don't have any papers on that  
8 yet. So I really am not in a position to address it because I  
9 don't have anything yet. Does he have New York counsel?

10 MR. DICKSTEIN: I'm sorry?

11 THE COURT: Does he have New York counsel?

12 MR. DICKSTEIN: He has Georgia case who I believe  
13 has been in touch with chambers and trying to figure out a way  
14 to get that motion facilitated to be transferred here.

15 THE COURT: If it's been transferred by the court in  
16 Georgia I mean what's done has to be done but I -- I don't  
17 know what he wants to do. I don't know if he wants to have  
18 Georgia counsel come up or wants to retain local counsel but I  
19 don't have any papers on it yet at all so I'm really not in a  
20 position to address it at this point. I don't have anything  
21 yet.

22 MR. DICKSTEIN: We're in touch with his counsel so  
23 we'll let him know that status, that fact.

24 I also just wanted to inform the Court that --

25 THE COURT: If you're going to talk to him I'm also

1 amenable doing it telephonically if there are no documents I  
2 need to look at. If it will save him the trip for a half hour  
3 argument or an hour argument save him a trip from Atlanta I'm  
4 happy to do it telephonically too.

5 MR. DICKSTEIN: I'm sure he'll appreciate that.

6 THE COURT: If everybody is okay with that.

7 MR. DICKSTEIN: I'll relay that.

8 The other thing I just wanted to bring to the  
9 Court's attention. Van Morrison has filed a motion to quash  
10 in the Northern District of California.

11 THE COURT: I saw something that says he lives in  
12 Belfast.

13 MR. DICKSTEIN: That's one of the grounds I think on  
14 which he's moving to quash is that he was not properly served.  
15 I think that motion to quash was just filed earlier this week  
16 or possibly late last week. So I'm sure it hasn't made its  
17 way up. I just wanted to let the Court know.

18 THE COURT: We don't -- no papers have hit the  
19 docket yet regarding either Mr. Stipe or Mr. Morrison.

20 MS. RANAHAN: A few things, Your Honor, on those  
21 issues if I could. We're filing oppositions today to the two  
22 for Thursday for -- we've already done Israelite as you may  
23 have seen.

24 THE COURT: You've already what?

25 MS. RANAHAN: We've already filed the one for

1 Israelite but we'll be doing the Keith Richards and the Burn  
2 today. If you're not going to hear the Stipe one we'll --  
3 maybe we'll do that a little later because you don't have it  
4 yet before you.

5 Then as far as Van Morrison goes, Your Honor, he  
6 actually has a residence in Menlo Park and we served him in  
7 California. So that's why it's in the Northern District of  
8 California and I understand their position is that he actually  
9 resides more in Belfast. So that's one of the issues that  
10 would be either before the court in Northern California or  
11 before Your Honor if it makes its way here. But in the  
12 meantime --

13 THE COURT: Is he Irish originally?

14 MS. RANAHAN: I don't think so. Is he?

15 THE COURT: -- Belfast?

16 MS. RANAHAN: Northern Ireland or something.

17 MR. DICKSTEIN: I think that's right. Just to  
18 complete that, Your Honor. On the Israelite motion we're  
19 going to put in a very short reply either later today or  
20 tomorrow if that's okay with the Court.

21 THE COURT: All right.

22 MS. RANAHAN: One more thing, Your Honor. Something  
23 that we're filing today for the Keith Richards is under --  
24 it's something that should be under seal but as far as the  
25 third parties go they're not necessarily part of the

1 protective order yet. So I'm just wondering if we can follow  
2 the normal protective order sealing procedures for filing a  
3 couple under seal things for the Keith Richards opposition.

4 THE COURT: Yes. The protective order allows you to  
5 file things under seal, does it not?

6 MS. RANAHAN: Yes.

7 THE COURT: So you should be okay with that.

8 MS. RANAHAN: Thank you, Your Honor.

9 THE COURT: Last time around. Anything else from  
10 either side?

11 MS. RANAHAN: No. Thank you, Your Honor. We'll see  
12 you Thursday.

13 THE COURT: Thank you all. See you Thursday.

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer, CET-805

7 Dated: February 17, 2017  
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